

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2391

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

Appellee,

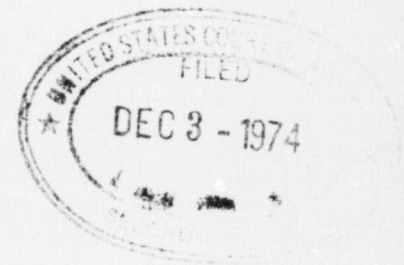
DOCKET NUMBERS 74-2391
74-2441

- against -

PETER A. PEPE and JOHN E.
COUGHLIN,

Defendants-Appellants.

-----x



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX OF APPELLANT PETER A. PEPE

DAVID BLACKSTONE
ATTORNEY FOR APPELLANT
401 BROADWAY
NEW YORK, NEW YORK 10013
226-6684

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APPENDIX

EXHIBIT A

JEN:as
73-3184
d-265

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

- v - :

JOHN E. COUGHLIN, a/k/a Tinker, :
PETER A. PEPE, :

Defendants. :

-----x

INDICTMENT

CV.
74104

The Grand Jury Charges:

1. From on or about the 1st day of September, 1972 up to and including the 30th day of October, 1972, in the Southern District of New York, and elsewhere, JOHN E. COUGHLIN, a/k/a Tinker, and PETER A. PEPE, the defendants, and Walter Joseph Burton, named herein as a co conspirator and not as a defendant, unlawfully, wilfully, and knowingly, did combine,

conspire, confederate, and agree together and with each other and with others to the grand jury unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2113(a), (b), and (d).

2. It was a part of said conspiracy that JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, the defendants, and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, unlawfully, wilfully, and knowingly, and by force and violence and by intimidation, would take from the person and presence of another, money belonging to and in the care, custody, control, management and possession of the Empire National Bank, Hyde Park Branch, Hyde Park, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

3. It was further a part of said conspiracy that JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, the defendants, and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, unlawfully, wilfully, and knowingly, and with intent to steal and purloin, would take and carry away money belonging to and in the care, custody, control, management, and possession of the Empire National Bank, Hyde Park Branch, Hyde Park, New York, a bank the deposits of which were then insured

by the Federal Deposit Insurance Corporation.

4. It was further a part of said conspiracy that JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, the defendants, and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, in committing and attempting to commit the offenses described in paragraphs 2 and 3 hereinabove, all allegations of which are incorporated herein by reference, would assault and put in jeopardy the lives of persons by the use of dangerous weapons and devices, to wit, pistols.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about the 30th day of October, 1972, the defendants JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, and Walter Joseph Burton, named herein as a co-conspirator and

and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, entered the Empire National Bank, Hyde Park Branch, Hyde Park, New York;

2. On or about the 30th day of October, 1972, the defendants JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, left the vicinity of the Empire National Bank, Hyde Park Branch, Hyde Park, New York, in a green colored automobile;

3. On or about the 30th day of October 1972, the defendants JOHN E. COUGHLIN, A/k/a Tinker, and PETER A. PEPE, and Walter Joseph Burton, named herein as a co-conspirator and not as a defendant, left Hyde Park, New York and proceeded to the Stratford Motor Inn, Stratford, Connecticut.

O (Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

On or about the 30th day of October, 1972, in the Southern District of New York JOHN E. COUGHLIN, a/k/a Tinker, and PETER E. PEPE, the defendants, unlawfully, wilfully, and

JEN:as
73-3184
d-265

knowingly, and by force and violence and by intimidation, did take from the person and presence of another, money, to wit, approximately \$31,000.00 belonging to and in the care, custody, control, management, and possession of the Empire National Bank, Hyde Park Branch, Hyde Park, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2, 2113(a).)

COUNT THREE

The Grand Jury further charges:

On or about the 30th day of October, 1972, in the Southern District of New York, JOHN E. COUGHLIN, a/k/a Tinker and PETER A. PEPE, the defendants, unlawfully, wilfully, and knowingly, and with intent to steal and purloin, did take and carry away money, to wit, approximately \$31,000.00 belonging

carry away money, to wit, approximately \$31,000.00 belonging to and in the care, custody, control, management, and possession of the Empire National Bank, Hyde Park Branch, Hyde Park, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2, 2113(b).)

COUNT FOUR

The Grand Jury further charges:

On or about the 30th day of October, 1972, in the Southern District of New York JOHN E. COUGHLIN, a/k/a Tinker, and PETER A. PEPE, the defendants, in committing and attempting to commit the offenses alleged in Counts 2 and 3 of this indictment, all allegations of which are incorporated herein by reference, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of persons by the use of dangerous weapons and devices, to wit, pistols.

(Title 18, United States Code, Sections 2, 2113(d).)

FOREMAN

PAUL J. CURRAN
United States Attorney

APPENDIX

EXHIBIT B

THE UNITED STATES

For U. S.:

vs.

James E. Nesland, AUSA

JOHN E. COUGHLIN, a/k/a Tinker

264-6470

PETER A. PEPE

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

Clerk, 1 + 2

Marshal,

Attorney,

COMMUNIST CONSPIRACY, T. 18

Witness 371,2113(a), (b), (d)

Consp. to rob bank. (Ct. 1)

Robbery of insured bank by

use of force and violence. (Cts 2-4)

(Four Counts)

NOV 13 1974

SECOND CIRCUIT

DATE

PROCEEDINGS

1-21-74 Filed indictment.

2-11-74 Deft. Coughlin (atty. present) Pleads not guilty.

Deft. Pepe (atty. present) Pleads not guilty. \$20,000. P.R.B. to be signed by wife. Case assigned to Judge Frankel. Lasker, J.

2-15-74 PETER A. PEPE - Filed P.R.B. in amt. of TWENTY THOUSAND DOLLARS

2-20-74 Filed notice of readiness for trial.

2-21-74 PETER A. PEPE - Filed notice of appearance by Daniel L. Meyers 380 Madison Ave. NYC

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Frankel, J.

DATE	PROCEEDINGS
2-22-74	File CJA appointment of counsel Ralph A. Addonizio 185 Sullivan St, NYC
3-5-74	For JOHN E. COUGHLIN - Filed affdvt. & notice of motion/for discovery & inspection. To strike alias Tinker and to suppress....Ret. March 13, 1974. Frank
3-14-74	Filed affdvt. of JAMES E. NESLAND, AUSA in response to the joint motions of deft's.
3-19-74	*****BOTH DEFT'S - Filed memorandum opinion #40474 defts have made motions largely identical to each other****Except as granted***motions are denied. Frankel, J.....Mailed notice
3-19-74	P.A. PEPE - Filed notice of motion for discovery & inspection & to suppress
4-5-74	Pre-Trial Conference Held
4-29-74	Filed affdvt. of AUSA James E. Nesland in satisfaction of the outstanding discovery rec
5-3-74	Filed stip & order that deft's are aware of their rights to a speedy trial and waive the requirements of the six months rule....Frankel, J.
5-31-74	PETER PEPE - Filed CJA appointment of David Blackstone, Esq. 335 B'Way NYC...Frankel, J.
7-24-74	FILED CJA COPIES 285 FOR COURT REPORTERS - PEPE
8-23-74	Filed affdvt. of James E. Neslan, AUSA in support of a W/H/C ad Test.
7-24-74	FILED CSA COPIES 285 FOR COURT REPORTERS = COUGHLIN
9-10-74	BOTH DEFTS - Jury trial begun before Frankel, J.
9-30-74	FILED GOVTS REQUEST TO CHARGE
9-11-74	Trial cont'd.
9-12-74	Trial cont'd.
9-13-74	Trial cont'd.
9-16-74	Trial cont'd. & concluded. Both Deft's GUILTY on Cts. 1 thru 4 Sent. 10-16. Both Deft's Remanded....Frankel, J.
10-23-74	PETER A. PEPE - Filed Judgment(Atty. David Blackstone, present) the deft is committed for imprisonment for a period of FIVE YEARS on count 4, the Court having treated the four counts as stating a single offense for purposes of imposition of such sentence. The Court recommends commitment to Danbury, Conn., in such institution as may be appropriate if that is not possible, as close as feasible to New Haven, Conn...Frankel, J. Ent. 10-25 Deft is remanded.....

PROCEEDINGS

10-23-74 ✓ JOHN E. COUGHLIN - Filed Judgment (Atty. Roland Thau, present) the deft is committed for imprisonment for a period of FIVE YEARS on count four, the Court having treated the ~~for~~ four counts as stating a single offense for purposes of imposition of such sentence... The Court recommends commitment to Danbury, Conn., in such institution as may be appropriate, if that is not possible, as close as feasible to New Haven, Conn..... Frankel, J..... Ent. 10-25-74 --- Deft is Remanded.

10-23-74 x PETER A. PERE - Filed notice of appeal from final Judgment of Oct. 23-74.. Copy given to U.S. Atty. and Mailed to deft at Federal House of Detention 427 West St. New York, N.Y..... Permission to appeal in forma pauperis granted..... Frankel, J

10-30-74 JOHN E. COUGHLIN FILED NOTICE OF APPEAL FROM JUDGMENT OF OCT 23, 1974

A TRUE COPY

RAYMOND E. PURCELL, Clerk

R. Thompson
Deputy Clerk

APPENDIX

EXHIBIT C

1 lhrb

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2 In response to that indictment, the two
3 Defendants on trial here pled not guilty. That meant
4 from the instant of that plea that the burden was
5 placed on the Government to prove guilt beyond a reason-
6 able doubt before either of these defendants could be
7 convicted.

8 It is a corollary of that burden on the
9 Government that a Defendant need not adduce any proof
10 of any kind about the events that are in issue.

11 A Defendant comes before us in every case,
12 and in this case, armed with the presumption of innocence.
13 That presumption has been with these Defendants throughout
14 this criminal proceeding. It remains with them now.

15 It will be enough to require you to acquit
16 until or unless you are convinced of guilt beyond a reasonable
17 doubt. Being under no obligation in our system to
18 adduce evidence of any kind, though he may if he wishes,
19 a Defendant, of course, has an absolute right to decide
20 himself and in consultation with counsel whether or not
21 he will take the witness stand.

22 As you know, the Defendants in this case
23 have not taken the stand. To respect that right of
24 theirs to make that decision, to respect it fully, you
25 must draw no inference of any kind against either of

APPENDIX

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

United States of America :
vs. : Criminal No. 73-16
William McNellis :

Concord, New Hampshire
July 12, 1973
Thursday

TESTIMONY OF WITNESS WALTER BURTON

BEFORE:

The Honorable Hugh H. Bownes,
U. S. District Judge, and a jury.

Appearances:

Carroll Jones, Esq., U. S.
Attorney, and Roger Gauthier,
Esq., Assistant U. S. Attorney,
for the U. S. A.

Thurl Stalnaker, Esq., Special
Agent, Federal Bureau of
Investigation.

Michael R. Callahan, Esq., and
Michael M. Lonergan, Esq., for
the defendant.

WALTER BURTON

called as a witness in rebuttal by the Government, having been previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION

(Questions by Mr. Jones)

- Q. Now, Mr. Burton, are you acquainted with an individual by the name of Lubesky?
- A. Yes.
- Q. What is his first name?
- A. Roger.
- Q. And where did you become acquainted with him?
- A. Up at prison.
- Q. Which one?
- A. Somers, Connecticut.
- Q. And did you have that much contact with him during this period of time?
- A. No.
- Q. Did you ever discuss any matters with him?
- A. No.
- Q. Did you have any communication at all with Mr. Lubesky?
- A. Very low. He was four cells away from me.
- Q. And how did he communicate with you?
- A. Well, he sent me a note once, and then he just yelled out once in a while.

Q. And what was in the note that he sent to you?

MR. CALLAHAN: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: He wanted to come up and be a witness in this trial and say that he participated and then take the Fifth Amendment. I was going to say this, and then have him take the Fifth.

(Questions by Mr. Jones)

Q. And when did he offer to do this?

A. A month ago.

Q. A month ago?

A. Yes.

Q. And was this ~~some~~ special area in the jail in which you were located?

A. Yes, segregation block.

Q. And was this prior to your entering a plea of guilty?

A. I didn't mean to plead at that time, no.

Q. So the case was still outstanding against you?

A. Yes.

Q. And did you discuss with him at all his offer to come up here and take the Fifth?

MR. CALLAHAN: I object to this continuing series of leading questions. Every one of these questions --

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THE COURT: Well, they are leading. I

will let him answer this one.

THE COURT: Do you understand the question pending, Mr. Burton?

THE WITNESS: Yes. Well, I was going to call him up as a witness in my behalf. And then, when he got up here, he was going to take the Fifth Amendment. And he says if I wanted to call him, call him, that's all.
(Questions by Mr. Jones)

Q. Did you have any discussions with him regarding your committing suicide?

MR. CALLAHAN: Objection.

THE COURT: Overruled.

THE WITNESS: In a phrase of speaking, I might have said it's time to hang up, or O. D.
(Questions by Mr. Jones)

Q. You may have said that to him?

A. Yes. Well, there was a hanging in the block a week or two before that, someone hanged himself, and it was just a phrase of conversation, you know.

MR. JONES: Nothing further.

CROSS EXAMINATION

(Questions by Mr. Callahan)

XQ. Mr. Burton, you testified that Mr. Lubesky offered to come up here and say that, and when he got up he would take the Fifth Amendment, is that right?

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A. That's right.

XQ. And I take it that the purpose of that trick was that then the jury would never know whether or not Mr. Lubesky robbed a bank, right?

A. I presume so, yes.

XQ. That was the trick there, wasn't it?

A. Yes.

XQ. Didn't you and Mr. Lubesky know he was in prison when the bank robbery occurred?

A. Yes.

XQ. How did you think the trick was going to hold up?

A. Well, I didn't think it was going to hold up. I mean, he was in prison.

XQ. It wasn't much of an idea?

A. No. He just wanted to come up and see if he could take off, I guess.

XQ. Now, there's been some testimony about suicide, and you said something about an O. D.?

A. I may have mentioned it, yes, hang-up, hanging. It's just a phrase used in jail when you have got a lot of time.

XQ. How about O. D.?

A. O. D., hanging.

XQ. What does O. D. mean?

A. Overdose of drugs.

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XQ. What happens when you O. D.?

A. Well, I guess you die.

XQ. Did you ever tell anybody you tried to hang yourself and you were too much of a coward to do it?

A. No.

XQ. Any words to that effect?

A. I may have said I would hang myself, but I'm too much of a coward, or something like that.

XQ. I take it you were really feeling the pressure of the time you were looking at, is that right?

A. I was under some pressure, yes.

XQ. Gwen was pregnant, all of the responsibilities you wanted to fulfill, right?

A. Yes, I was under pressure, I would say.

XQ. What is called hard time?

A. Every day is hard time to me.

MR. CALLAHAN: O. K. I have nothing further, thank you.

MR. JONES: Nothing further, Your Honor.

THE COURT: All right. Thank you, Mr.

Burton.

(The witness left the stand.)

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes in the aforementioned matter.

Gerard J. Hall
Court Reporter

Copy received

Dec 3, 1974

Paul H. Curran

U.S. Attorney

Dist of N.Y.